



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

---

Mailed and Filed: JULY 26, 2022

IN THE MATTER OF:

Appeal Board No. 622475

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective September 29, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by MONTEFIORE MEDICAL CENTER prior to September 29, 2021 cannot be used toward the establishment of a claim for benefits; and in the alternative, disqualifying the claimant from receiving benefits, effective September 29, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There was an appearance by the claimant. By decision filed March 25, 2022 (), the Administrative Law Judge sustained the initial determination of voluntary separation and overruled the initial determination of misconduct.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it sustained the initial

determination of voluntary leaving of employment without good cause.

Our review of the record reveals that the case should be remanded for a hearing. Further testimony and evidence should be taken on the issue of voluntary separation of employment without good cause. We note that the employer was unable to appear at the March 24, 2022 hearing and requested an adjournment. In light of the claimant's contention that she was not

"personnel" to whom the vaccine mandate applied because she performed 100 percent of her work remotely, we have determined that the employer should have another opportunity to appear in this matter.

To that end, the employer is directed to contact the Hearing Section before the remand hearing to arrange review of the claimant's prior testimony and Exhibits 1 through 9. The employer is also directed to produce witnesses who have first-hand knowledge of the claimant's job title, responsibilities, and work location.

At the remand hearing, the employer shall be given an opportunity to cross-examine the claimant's prior testimony. The employer witnesses then shall be questioned about whether the claimant was considered "personnel" and, if not, why; the reason that the vaccine mandate applied to the claimant; whether the claimant had worked exclusively from home since March 2020; and under what circumstances, if any, the claimant was required, or might have been required, to report to work in person.

The employer shall also be confronted with Exhibits 1 through 9, and given an opportunity to offer testimony about each, as well as raise objections to their entry into the record.

The parties may produce any other relevant documents or witnesses. A party that wishes to offer a new document for the record should provide copies to both the Hearing Section and the other party prior to the remand hearing.

The Administrative Law Judge shall take any other testimony or evidence necessary to decide the case.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge, insofar as it sustained the initial determination of voluntary separation without good cause, is rescinded; and it is further

ORDERED, that the case shall be remanded to the Hearing Section to hold a hearing on the issue of voluntary separation, upon due notice to all parties and their representatives; and it is further

ORDERED, that the employer shall contact the Hearing Section prior to the

remand hearing and arrange to review the transcript of the hearing held on March 24, 2022, as well as Exhibits 1 through 9; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issue of voluntary separation, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER